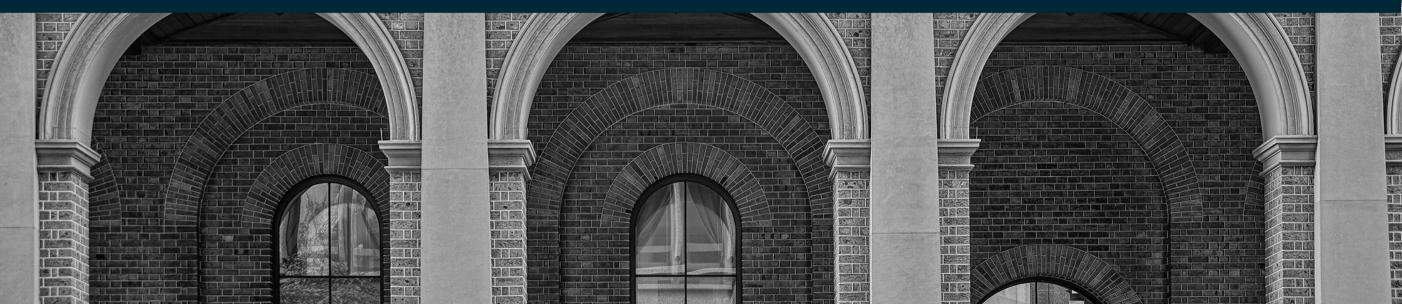




Tips from the Bar: working with Counsel and appearing in Court

Briefing Counsel, appearing in Court and the use of technology



Introduction – Appearing in Court

- 1. Solicitors often appear in Court in the lead up to the final hearing (even if counsel has been briefed), generally for:
 - a. Directions hearings; and
 - b. Motions.
- 2. Touch on following topics:
 - a. What to expect;
 - b. How to prepare; and
 - c. Tips and tricks.



Directions Hearings

- 1. Depending on the Court, also known as: mention, case management hearing, review, call-over.
- 2. Involves a short court appearance, often in a list, where a registrar or judge (depending on the Court) will make orders about the next steps to prepare a matter for hearing.
- 3. To address procedural matters before trial, such as:
 - a. timetables for pleadings and/or evidence;
 - b. referring proceedings to ADR;
 - c. directions for expert evidence (single, conclaves etc);
 - d. procedural matters for discovery, court books and hearings (electronic, AVL, mode of evidence etc); and
 - e. timetables for exchange of hearing documents (submissions, objections, trial schedules etc).



Motions/Applications

- 1. Depending on the Court, also known as: Notices of Motion, Interlocutory Applications, Applications in the Case
- 2. Generally involve a written application, supported by evidence, for interlocutory or interim (not final) orders.
- 3. Often concern contested procedural issues such as: applications for particulars, discovery, extensions of time, vacate hearing dates, access orders etc.
- 4. Almost invariably made in writing and supported by evidence which has been personally served in advance of the return date for the Motion: UCPR Pt 18; FCR Pt 17.
 - a. Prepare the evidence with your submissions in mind
- 5. Return date (directions) vs hearing of Motion



Going to Court – preparation

- 1. The basics: date/time, location (AVL), who is presiding, number in the list, who do you appear for
- 2. Requirements of the particular Court and List: these can be found in Practice Notes (NB: new protocols since pandemic), talking to colleagues, arriving early to observe, ask practitioners who appear there regularly
- 3. Prepare your application:
 - a. What are you seeking Short Minutes
 - b. Does the Court/Registrar have power law
 - c. Why should you get it facts (make a note of evidence you read)
- 4. Your opponent: discuss, consent orders, hostility



Advocacy

- 1. Arrive appearance sheet, opponent, claim the space
- 2. Plan the first 30 seconds appearance, first sentences
- 3. Structure organise your argument
- 4. Key points only time
- 5. Speed need to be understood
- 6. Assist the Court written submissions, chronology
- 7. Questions preparation, what if you don't know
- 8. Etiquette clothing, mobiles, interrupting, standing, bowing
- 9. Terminology "may it please", "move", "read", "tender"
- 10. Practise mooting, workshops, saying 'yes'



Electronic briefing



Tips for electronic briefing

- 1. An electronic brief is not a bundle of documents in a folder
- 2. No two electronic briefs are the same
- 3. Pay attention to page numbering
- 4. Minimise the number of folders
- 5. Pay attention to document name
- 6. Keep correspondence chronological
- 7. Don't be afraid to do a hybrid brief
- 8. Try not to prepare an electronic brief by scanning hard copy documents



Tips and traps



Alone we can do little, together we can do so much

- Helen Keller



Tips no matter who you are working with

- 1. Call the clerk / secretary / practice manager
- 2. Ask how the barrister wants to be briefed
- 3. Provide an index
- 4. Chronology
- 5. Observations
- 6. Advise of upcoming deadlines
- 7. Provide all documents
- 8. Documents in chronological order where practical



Working with paper

- 1. Avoid overfilling binders
- 2. Paginate everything
- 3. Clearly label cover and spine with matter details and solicitor
- 4. Double sided pages avoids blanks
- 5. Bulldog clips / staples controversial
- 6. Avoid duplicates



E Briefs

- 1. Save all documents as PDF
- 2. Name documents clearly
- 3. Index to accord with the naming of documents
- 4. Avoid documents within emails
- 5. Ensure that the final Court Book / bundle is paginated AND is identical to the hard copy version
- 6. Chronological order where possible



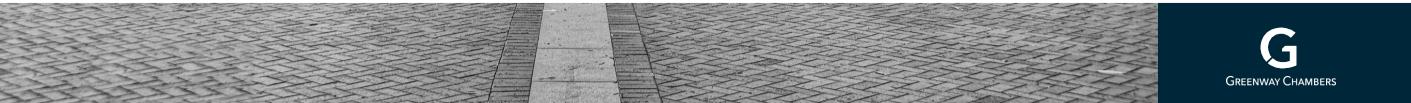
Other tips

- 1. Read the practice note
- 2. Its ok to follow up
- 3. Advise of special requirements for billing
- 4. Different matters have different requirements
- 5. Providing any advices given to the client (by other Counsel or you)



Final remarks

- 1. Think about how you would like to receive the brief
- 2. It won't go unnoticed



Questions

